



STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION  
DIVISION OF WATER POLLUTION CONTROL  
401 Church Street  
L&C Annex 6th Floor  
Nashville, TN 37243-1534

July 14, 2008

Mr. Howard Waldo  
Post Office Box 83  
Crossville, Tennessee 37557

**CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**  
**RECEIPT #7006 0810 0000 1061 9027**

Subject: DIRECTOR'S ORDER NO. WPC08-0130  
REBECCA NELSON PROPERTY ON BROTHER MOUNTAIN ROAD  
OVERTON COUNTY, TENNESSEE

Dear Mr. Waldo:

Enclosed is a Director's Order and Assessment of Civil Penalty issued by Paul E. Davis, Director of the Division of Water Pollution Control, under the delegation of Commissioner James H. Fyke. Read the Order carefully and pay special attention to the NOTICE OF RIGHTS section.

Corporations, limited partnerships, limited liability companies, and other artificial entities created by law must be represented in any legal proceeding resulting from an appeal of this Order and Assessment by an attorney licensed to practice law in the State of Tennessee. Non-attorneys may participate in any such proceedings to the extent allowed by law.

If you or your attorney has questions concerning this correspondence, contact Paulette Barton at (615) 532-0683.

Sincerely,

Patrick Parker, Manager  
Enforcement and Compliance Section

PNP:BPB

cc: DWPC - CKEFO-Rita Thompson  
DWPC - Compliance File  
OGC



**STATE OF TENNESSEE  
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

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<b>IN THE MATTER OF:</b>	)	
	)	
<b>HOWARD WALDO</b>	)	<b>DIVISION OF WATER</b>
	)	<b>POLLUTION CONTROL</b>
	)	
<b>RESPONDENT</b>	)	<b>CASE NUMBER WPC08-0130</b>

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**DIRECTOR'S ORDER AND ASSESSMENT**

NOW COMES Paul E. Davis, director of the Tennessee Division of Water Pollution Control, and states:

**PARTIES**

**I.**

Paul E. Davis is the duly appointed director of the Tennessee Division of Water Pollution Control (hereinafter the "director" and the "division" respectively) by the commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "commissioner" and the "department" respectively).

**II.**

Howard Waldo (hereinafter the "Respondent") is a resident of Overton County, Tennessee, and is the mine operator of a dimension stone mining operation located on Brotherton Mountain Road in Overton County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent at Post Office Box 83, Crossville, Tennessee 37557.

**JURISDICTION**

**III**

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) §69-3-101 *et seq.*, the Water Quality Control Act, (the "Act") has occurred,



or is about to occur, the commissioner may issue a complaint to the violator and the commissioner may order corrective action be taken pursuant to T.C.A. §69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. §69-3-115 of the Act; and has authority to assess damages incurred by the state resulting from the violation, pursuant to T.C.A. §69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. §69-3-105 and are effective as the *Official Compilation Rules and Regulations of the State of Tennessee*, Chapters 1200-4-3 and 1200-4-4 (the "Rule"). Pursuant to T.C.A. §69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

#### IV.

The Respondent is a "person" as defined by T.C.A. §69-3-103(20) and as herein described, the Respondent has violated the Act.

#### V.

T.C.A. §69-3-108 requires a person to obtain coverage under a permit prior to discharging any substances to waters of the state, or to a location from which it is likely that the discharged substance will move into waters of the state. Coverage under the Tennessee Multi-Sector General Permit for Industrial Activities (hereinafter the "TMSP" or "permit") may be obtained by submittal of a Notice of Intent (NOI).

#### VI.

The unnamed tributary to Turkey Creek, referred to herein, is "waters of the state" as defined by T.C.A. §69-3-103(33). Pursuant to T.C.A. §69-3-105(a)(1), all waters of the state have been classified by the Tennessee Water Quality Control Board for suitable uses.



Department Rule 1200-4-4, *Use Classifications for Surface Waters*, is contained in the *Rules of Tennessee Department of Environment and Conservation Division of Water Pollution Control Amendments*. Accordingly, these waters of the state are classified for the following uses: fish and aquatic life, recreation, irrigation, livestock watering and wildlife.

## **FACTS**

### **VII.**

On December 21, 2007, division personnel from the Cookeville Environmental Field Office (CKEFO) conducted a complaint investigation and noted that dimension stone mining activities were occurring. Division personnel found heavy equipment and containers full of excavated stones at the site. There had not been any Erosion Prevention and Sediment Control (EPSC) measures installed, sediment had migrated offsite, and the site had not been stabilized.

A subsequent file review determined that the site owner had not requested nor been issued TMSP coverage for dimension stone mining activities at the site.

### **VIII.**

On January 2, 2008, the division issued a Notice of Violation (NOV) to the site owner, Rebecca Nelson, for the violations observed during the December 21, 2007, complaint investigation. The site owner was instructed to stabilize all mined areas, install drainage control measures to prevent sediment from migrating into waters of the state, and to install EPSC and stabilization measures. The site owner was further instructed to submit a TMSP application to the division if further mining activity was to occur. The site owner was to provide a written response to the NOV no later than January 10, 2008, indicating if further mining activity was



expected to occur and describing all EPSC and site stabilization measures installed. The NOV was returned as unclaimed.

#### **IX.**

On January 17, 2008, the division reissued the January 2, 2008, NOV, requesting a written response no later than January 28, 2008.

#### **X.**

On February 1, 2008, the site owner informed the division that the Respondent had been conducting mining activities at the site. A subsequent file review determined that the Respondent had not applied for nor been issued TMSP permit coverage for dimension stone mining activities at the site.

#### **XI.**

On May 1, 2008, division personnel conducted a follow-up site inspection and noted that additional mining activities had occurred, there were no EPSC measures installed, and the site remained unstabilized.

#### **XII.**

On May 5, 2008, the division issued a NOV to the Respondent for violations observed during the May 1, 2008, site inspection. The Respondent was instructed to immediately install adequate EPSC measures, to stabilize the site, and to submit a written description of the measures implemented by May 15, 2008. To date, the division has not received a response from the Respondent.



### **XIII.**

During the course of this investigation, the division incurred damages in the amount of TWO HUNDRED NINE DOLLARS AND FORTY CENTS (\$209.40).

### **VIOLATIONS**

### **XIV.**

By conducting dimension stone mining activities without a valid permit, as described herein, the Respondent has violated T.C.A. Sections §§69-3-108(a)(b) and 69-3-114(b):

T.C.A. §69-3-108(a) states, in part:

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

T.C.A. §69-3-108(b) states, in part:

(b) It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

- (1) The alteration of the physical, chemical, radiological, biological, or bacteriological properties of any waters of the state;
- (6) The discharge of sewage, industrial wastes or other wastes into waters, or a location from which it is likely that the discharged substance will move into waters;

T.C.A. §69-3-114(b) states:

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in §69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the commissioner under this part.



## **ORDER AND ASSESSMENT**

### **XV.**

WHEREFORE, pursuant to the authority vested by T.C.A. §§69-3-109, 69-3-115 and 69-3-116, I, Paul E. Davis, hereby issue the following Order and Assessment to the Respondent.

1. The Respondent shall, within 15 days of receipt of this Order and Assessment, establish adequate EPSC and stabilization measures on-site, such that no additional sediment is allowed to leave the site and/or enter waters of the state.
2. The Respondent shall, within 7 days of completion, submit written documentation and photographic evidence indicating that adequate EPSC and stabilization measures are in place. The Respondent shall submit this written documentation and photographic evidence to the Water Pollution Control Manager at the CKEFO at 1221 South Willow Avenue, Cookeville, Tennessee 38506.
3. The Respondent shall maintain EPSC measures until such time as all land disturbance activities at the site are complete and erosion-preventive permanent cover is established.
4. If dimension stone mining activities are expected to continue, the Respondent shall, within 30 days of receipt of this Order and Assessment, submit a complete application for TMSP coverage under an NPDES permit for storm water discharges associated with dimension stone mining activities at the site to the Division of Water Pollution Control Manager at the CKEFO to the address listed in item 2, above.
5. The Respondent shall pay a CIVIL PENALTY of ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) to the division, hereby ASSESSED to be paid as follows:



- a. The Respondent shall, within 30 days of receipt of this Order and Assessment, pay a CIVIL PENALTY in the amount of FOUR HUNDRED DOLLARS (\$400.00).
  - b. If the Respondent fails to comply with Part XV, item 1 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE HUNDRED DOLLARS (\$300.00), payable within 30 days of default.
  - c. If the Respondent fails to comply with Part XV, item 2 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of TWO HUNDRED DOLLARS (\$200.00), payable within 30 days of default.
  - d. If the Respondent fails to comply with Part XV, item 3 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE HUNDRED DOLLARS (\$300.00), payable within 30 days of default.
  - e. If the Respondent fails to comply with Part XV, item 4 above in a timely manner, the Respondent shall pay a CIVIL PENALTY in the amount of THREE HUNDRED DOLLARS (\$300.00), payable within 30 days of default.
6. The Respondent shall pay DAMAGES to the division in the amount of TWO HUNDRED NINE DOLLARS AND FORTY CENTS (\$209.40) within 30 days of receipt of this Order and Assessment.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request



must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the division will be in writing. Should the Respondent fail to meet the requirement by the extended date, any associated Civil Penalty shall become due 30 days thereafter.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the director of the Division of Water Pollution Control on behalf of the commissioner of the Tennessee Department of Environment and Conservation on this 14<sup>th</sup> day of July 2008.



Paul E. Davis, P.E.  
Director, Division of Water Pollution Control

### **NOTICE OF RIGHTS**

Tennessee Code Annotated §§69-3-109, 115, allows the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water



Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. §4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing, the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20<sup>th</sup> Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14<sup>th</sup> Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.